

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 FEA-01 AGRE-00 CEA-01 CIAE-00
 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-07 INT-05
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P 051605Z AUG 77
FM AMEMBASSY WARSAW
TO SECSTATE WASHDC PRIORITY 9565

LIMITED OFFICIAL USE SECTION 1 OF 2 WARSAW 5467

PASS TREASURY FOR GENERAL COUNSEL MUNDHEIM

EO 11652N/A
TAGS: ETRD EEWT PL
SUBJ: POLISH GOLF CARTS

REF: STATE 182492

1. SUMMARY: WE APPRECIATE THE STATUS REPORT IN REF AND ARE
CONFIDENT THAT THE POLITICAL AND TRADE POLICY CONSIDERATIONS
IN THE GOLF-CART CASE ARE WELL UNDERSTOOD. THE FACT THAT ALL LEGAL
ALTERNATIVES TO USE OF AMERICAN SELLING PRICES ARE BEING CONSIDERED,
INCLUDING A SEARCH FOR OTHER POSSIBLE PRODUCERS, IS ALSO ENCOUR-
AGING. WE SHOULD POINT OUT, HOWEVER, THAT WE HAVE ENCOUNTERED IN THE
LAST TWO WEEKS MUCH GREATER CYNICISM ON THE PART OF POLISH OFFICIALS.
THESE OFFICIALS SEEM CONVINCED THAT TREASURY HAS SUFFICIENT
FLEXIBILITY UNDER THE LAW TO PURSUE ALTERNATIVES COURSES MORE
FAVORABLE TO THE POLISH EXPORTER AND THAT ONLY THE LACK OF A
STRONG POLISH INTEREST ON THE PART OF THE USG IS PREVENTING THIS
FLEXIBILITY FROM BEING EXERCISED. END SUMMARY.

2. THE POLES ARE HAVING A HARD TIME ACCEPTING OUR EXPLANATIONS
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OF THE GOLF-CART CASE. THEIR CYNICISM WAS MOST EVIDENT IN DISCUSSIONS
WITH VICE CHAIRMAN OF THE PLANNING COMMISSION SYKSTUS OLESIK
ON JULY 29. OLESIK, THE FATHER OF POLAND'S COOPERATION AGREEMENT
WITH INTERNATIONAL HARVESTER AND A FIRM SUPPORTER OF EXPANDED
TRADE WITH THE US, SAID HE "SIMPLY COULD NOT ACCEPT" THE EXPLANATION
THAT SUCH A NEGATIVE DECISION (USE OF AMERICAN SELLING PRICE)
WAS REQUIRED BY LAW. WHEN ASKED TO EXPLAIN, OLESIK SAID THAT INDEPEN-

DENT ATTORNEYS CONSULTED IN THE US WERE CONVINCED THAT CUSTOMS WAS BEING UNNECESSARILY RIGID IN ITS INTERPRETATION OF THE LAW. HE WAS NOT SPECIFIC ON THIS POINT, BUT ASKED HOW ANYONE COULD ACCEPT THE ILLOGICAL FINDINGS OF THE INVESTIGATION THUS FAR. HE ASKED WHETHER THE JUMP IN PRODUCTION COSTS OF THE CANADIAN PRODUCER, AS SHOWN IN THE TENTATIVE CUSTOMS FINDINGS, HAD NOT LED ANYONE TO QUESTION THE VERACITY OF THIS INFORMATION. (COMMENT: OLESIK DID NOT HAVE PRECISE FIGURES AT HAND. FROM OUR CALCUALTIONS, HOWEVER, A DUMPING MARGIN OF ABOUT \$500 FOR THE FIRST THREE QUARTERS OF 1976 (STATE 165180) WOULD MEAN THAT THE COMPARABLE COSTS OF THE CANADIAN PRODUCER HAD INCREASED FROM ABOUT \$721 IN MAY 1975 TO ABOUT \$1,160 IN SEPTEMBER, 1976--A RISE OF OVER 60 PERCENT. END COMMENT) WE REPEATED TO OLESIK OUR STEP BY STEP EXPLANATION OF THE CUSTOMS INVESTIGATION, BUT HE REMAINED UNCONVINCED.

3. ALONG THESE SAME LINES, OFFICIALS AT PEZETEL, THE POLISH EXPORTER, TOLD AN EMBASSY OFFICER ON AUGUST 2 THAT INDEPENDENT ATTORNEYS RECENTLY CONSULTED IN THE US HAD EXPRESSED DISBELIEVE AT APPARENT INTERPRETATIONS OF THE LAW BY CUSTOMS OFFICIALS AND HAD SAID THAT NO COURT IN THE UNITED STATES WOULD RULE AGAINST PEZETEL IF IT WERE FORCED TO CHALLENGE THE FAIR-VALUE FINDINGS FOR 1976 AND 1977 WITH WHICH IT HAD BEEN PRESENTED THUS FAR. PEZETEL'S US ATTORNEY WILL APPARENTLY WRITE SOON TO SECRETARY BLUMENTHAL TO EXPLAIN THE LEGAL ALTERNATIVES OPEN TO TREASURY. PEZETEL OFFICIALS OFFERED SEVERAL EXAMPLES OF SUCH LEGAL POINTS. FIRST, THE QUESTION OF MARATHON'S BEING IN "ACTIVE PRODUCTION" WAS NOT LIMITED OFFICIAL USE

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RAISED IN INVESTIGATIONS IN 1973-1975 AND CONSTITUTED A NEW AND UNFAIR BURDEN OF PROOF. SECOND, THE METHOD OF COLLECTING INFORMATION ON MARATHON'S ACTIVITIES WAS NOT SUFFICIENTLY STRICT WHEN DEALING WITH A COMPANY WITH A "VESTED INTEREST" AND ONE WHICH MIGHT BE OUT OF PRODUCTION TODAY AND BACK IN TOMORROW. THE PEZETEL OFFICIALS SAID CUSTOMS OFFICERS RECOGNIZE THAT MARATHON HAS HAD "VESTED INTERESTS" IN SUPPLYING INFORMATION ON THIS CASE, BUT HAVE FOUND NO WAY IN WHICH TO DISCOUNT THIS ELEMENT. THIRD, USE BY THE CUSTOMS SERVICE OF AN INFLATION FACTOR TO DETERMINE 1974 FAIR VALUE FROM THAT OF 1973 CONSTITUTED A PRECEDENT WHICH SHOULD BE USED IN DETERMINING FAIR VALUE FOR 1976 AND 1977, WHEN THE ACTIVITIES OF MARATHON WERE SUBJECT TO QUESTION.

4. POLISH OFFICIALS SAY THEIR DOUBTS HAVE ALSO BEEN FUELED BY THE OUTCOME OF CONSULTATIONS HELD WITH CUSTOMS OFFICIALS DURING THE WEEK OF JULY 25 ON THE PRICING OF FUTURE EXPORTS AND BY THE NEWS THAT DEPUTY ASSISTANT SECRETARY SUCHMAN HAS RESIGNED FROM TREASURY TO ACCEPT A POSITION WITH A LEGAL FIRM REPRESENTING A US PRODUCERSF GOLF CARTS.

5. PEZETEL REPRESENTATIVES HAVE DESCRIBED THE MEETINGS HELD WITH CUSTOMS LAST WEEK AS "VERXRDEPRESSING." THEY ALLEGE THAT, IN

RESPONSE TO THEIR QUESTIONS ON PRICING MI FUTURE EXPORTS OF
AIRCRAFT ENGINES AND EQUIPMENT, CUSHMS OXGICIALS REPLIED THAT
THEIR ADVICE ON THIS SUBJECT WOULD SERVE NO USEFUL PURPOSE, WAS
NOT ENVISAGED UNDER US LAW OR REGULATIONS, AND
WOULD NOT BE GIVEN. CUSTOMS OFFICIALSNEPORTEDLY ADVISED THAT
DUMPING CHARGES AGAINST SUCH PRODUCTS,

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P 051605Z AUG 77

FM AMEMBASSY WARSAW
TO SECSTATE WASHDC PRIORITY 9566

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PASS TREASURY FOR GENERAL COUNSEL MUNDHEIM

WHICH ARE NOT PRODUCED INT THIRD COUNTRIES, WOULD ALMOST
CERTAINLY REQUIRE COMPARISON WITH US PRODUCER PRICES. (COMMENT:
WE ASSUME THIS IS NOT AN ACCURATE DESCRIPTION OF THE TONE OF THE
DISCUSSIONS WITH CUSTOMS OR OF ITS APPROACH TO THE QUESTION OF
CONSULTATIONS ON PRICING OF FUTURE EXPORTS. OVER THE LAST YEAR, WE
HAVE EMPHASIZED TO POLISH OFFICIALS THAT SUCH PRICING ADVICE,
WHILE OFFEREING NO GUARANTEES OF PROTECTION AGAINST DUMPING
ALLEGATIONS, WOULD BE AVAILABLE UPON REQUEST AND COULD HELP AVOID
SOME OF THE PITFALLS OF THE GOLF-CART CASE. WE TOLD PEZETEL THAT
ITS RECEPTION MIGHT HAVE BEEN BETTER IF IT HAD ASKED FOR CUSTOMS'S
REACTION TO SPECIFIC PRICING PROPOSALS
AND COMPARISONS, RATHER THAN
PRESENTING THE QUESTIONS IN THE ABSTRACT. WE WOULD APPRECIATE ADVICE
AS TO HOW SUCH CONSULTATIONS WILL BE HANDLED IN THE FUTURE.
END COMMENT)

6. FOUR DIFFERENT POLISH OFFICIALS HAVE POINTEDLY TOLD US THAT
DEPUTY ASSISTANT SECRETARY SUCHMAN HAS RESIGNED FROM TREASURY TO
ASSUME A POSITION WITH A LEGAL FIRM REPRESENTING A US PRODUCER OF

GOLF CARTS. THESE OFFICIALS HAVE TOLD US THAT MR. SUCHMAN REMOVED
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HIMSELF FROM CONSIDERATION OF THE CASE BEFORE HIS RESIGNATION AND
WILL NOT HANDLE DIRECTLY THE INTERESTS OF THE US GOLF-CART PRODUCER.
COMMENT: THE TIMING OF THIS MOVE IS UNFORTUNATE. THE GOLF-CART
CASE HAS BEEN A LOOKING-GLASS WORLD FROM THE BEGINNING, AND
THE RAISED EYEBROWS WE HAVE SEEN ON THIS POINT INDICATE THAT THE
POLISH OFFICIALS BELIEVE THEY HAVE FINALLY FOUND SOMETHING THAT
MAKES SENSE. WE DOUBT IF WE WEILL EVER ALLAY THEIR SUSPICIONS
ON THIS POINT.

7. WE HAVE PULLED NO PUNCHES IN DESCRIBING TO VICE MINISTER
SPASOWSKI, VICE MINISTER STRZELECKI, AND DEPUTY CHAIRMAN OLESIK THE
LIKELIHOOD THAT TREASURY WILL HAVE TO USE US PRICES AS THE BASIS FOR
SETTING FAIR VALUE. WE DO NOT KNOW HOW ACCURATE THE ABOVE POLISH
VIEWS CONCERNING FLEXIBILITY AVAILABLE UNDER THE LAW MAY BE.
OUR ABILITY TO EXPLAIN THE INCONSISTENCIES WHICH THEY PERCEIVE,
HOWEVER, WILL INFLUENCE GREATLY THE EXTENT TO WHICH WE CAN MINIMIZE
THE NEGATIVE EFFECTS OF THIS CASE ON OUR POLITICAL AND TRADE
INTERESTS. THE FACT THAT TREASURY'S DOOR REMAINS OPEN TO THE POLES,
AS EVIDENCED BY THE MEETING SCHEDULED WITH GENERAL COUNSEL
MUNDHEIM, WILL BE HELPFUL.

8. WE WOULD ONLY LIKE TO RECALL THAT THE GOP'S AIMS IN THIS CASE
ARE MODEST: "LET PEZETEL STAY IN THE US MARKET." IN THIS
REGARD, PEZETEL OFFICIALS HAVE TOLD US THAT, IF A FAIR-VALUE
CALCULATION CAN BE MADE WITHOUT USE OF US SELLING PRICE, THEY
WOULD BE WILLING TO OFFER ASSURANCES THAT THEY WILL NOT EXPAND
THE VOLUME OF THEIR EXPORTS TO THE US. THIS PROBABLY MEANS THAT
THEY WOULD AGREE TO A SIGNIFICANT REDUCTION IN THEIR EXPORT
VOLUME IN ORDER TO DEMONSTRATE THAT TREASURY'S DECISION WOULD
NOT CAUSE INJURY TO US PRODUCERS.

9. WE RECOGNIZE--AS YOU WILL-- THAT THE RECRIMINATIONS HAVE
STARTED EVEN BEFORE THE TREASURY DECISION HAS BEEN MADE.
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POLISH ACCUSATIONS HAVE TO BE PLACED IN THE CONTEXT OF THE ULTIMATE
INABILITY OF WARSAW TO UNDERSTAND HOW THE US SYSTEM FUNCTIONS AND
OF THE VITAL NECESSITY FOR A NUMBER OF RESPONSIBLE POLISH OFFICIALS
TO FIND EXCUSES IN THE FACE OF INEVITABLE ACCUSATIONS OF
INCOMPETENCE WITHIN THE POLISH ESTABLISHMENT WHICH COULD EVENTUALLY
CAUSE THEM TO LOSE THEIR TEGSS. IN PARTICULAR, WE KNOW FULL WELL
HOW UNFAIR ARE THE RAISED EYEBROWS WHICH HAVE BEEN EVOKED BY THE
NEWS OF PETER SUCHMAN'S NEW JOB. WE IN THIS EMBASSY CONTINUE

TO BEMEEPLY GRATEFUL TO HIM FOR HIS EFFORTS TO ALLEVIATE THE
IMPACT OF THE ITC'S FINDING ON THE POLISH PRODUCER. HOWEVER,
WE WILL NEVER BE ABLE TO CONVINCЕ POLISH OFFICIALS WHO KNOW ABOUT
THIS CASE THAT THERE IS NOT A MALIGN CONNOTATION HERE.

10. I AM SURE THAT, ON OUR SIDE, WE WILL AVOID MEETING
RECRIMINATION WITH RECRIMINATION OR THROWING UP OUR HANDS IN THE
FACE OF POLISH BITTERNESS. END COMMENT.
DAVIES

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